IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

COMPANY PETITION No.1244 of 1999.

Resins & Plastics Ltd. Petitioner.

V/s.

Ajay Paints Pvt. Ltd Respondent.

Mr. Mody i/b M/s. Rustamji & Ginwala for the Petitioner.

None for the Respondent.

CORAM: V.C. DAGA,J.

DATED: 7TH FEBRUARY,2007.

P.C.:-

1. Heard the learned counsel for the petitioner. None appears for the respondent though served. No reply has been filed opposing this petition. Perused petition.

2. According to the petitioner, the goods which were sold, supplied and delivered to the respondent-company under various bills reflected in para 6 of the petition.

3. On the basis of that the respondent Company would issue to the petitioner, sales-tax "BC" Forms; the petitioner charged

the respondent company sales-tax at the rate of 4% on the amount of the invoice.

4. According to the petitioner, the respondent company failed to issue or submit the required sales tax "BC" Forms against the supplies made during 1993-94.Consequently, petitioner company was required to raise debit note on the respondent company.

5. The petitioner has further stated that the respondent company failed and neglected to pay amount due and payable to it towards sales tax liability as per debit note. Therefore, by its letter dated 4th August, 1997 petitioner requested the respondent Company to pay the said amount of Rs. 39,530.80 in respect of the said Debit Note within a period of 15 days from the date of receipt of notice.
Copy of the letter is produced on record.

6. According to the petitioner, neither the respondent Company paid the said amount or any part thereof nor did it give any reply to the said notice of the Petitioner.

7. The petitioner,therefore, issued second reminder on 30th September,1997. The

petitioner, thereafter left with no other alternative issued statutory notice which the respondent Company received but failed to reply.

8. The petitioner claimed to have issued another statutory notice by way of follow up action and reminder which are produced on record as Exhs.G and H. None of these notices were replied by the respondent nor any amount towards their dues has been paid. Hence this petition was filed by the petitioner for winding up of Company.

9. This petition was admitted on 1st February, 2000 and thereafter it was published in the newspapers and Gazette. Inspite of that none appears for the respondent company. No reply has been filed opposing the petition. In other words, assertions made by the petitioner are supported by the documents placed on record which remained uncontroverted and can virtually be said to have been admitted by the respondent by remaining silent. No reply has been filed opposing this petition.

10. In the above view of the matter, legal

presumption arises that the respondent has failed to discharge it's liability. The said legal presumption remained unrebutted. In this situation, this Court has no other option than to winding up the respondent Company. The petition is,thus, allowed in terms of prayer clauses (a) and (b) with no order as to costs.

[V.C.DAGA,J]